

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Alfonza Fitzgerald

Support Services Officer

Executive Office of the Mayor

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DATE: October 29, 2002

DOCKET NO.: CF 2002-01

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report), (OIG Control Number 2001-0188 (S)). In the Report, the Inspector General has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards of Conduct.

In the instant case, the Inspector General has alleged that Alfonza Fitzgerald (hereinafter respondent) engaged in private or personal business activity on government time and with the use of government resources on behalf of the private, non-profit Millennium Washington Capitol-Bicentennial Corporation (hereinafter MWCBC) in violation of §§1700.2, 1702,1705 and §1806.1 of the District Personnel Manual (hereinafter DPM).¹

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that

(1) DPM § 1806.1 reads as follows:

A District employee shall not use or permit the use of government property, equipment or material of any kind... for other than officially approved purposes.

DPM § 1806.1 is part of chapter 18, "Employee Conduct", which was initially issued in 1986, and implemented Title XVIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-618.01 et seq. (2001 edition). See also 31 DCR 6794 (10/31/86). In this matter OCF only has jurisdiction over the Employee Conduct regulations. Any potential violations of the procurement regulations have been referred to the Chief Procurement Officer (hereinafter CPO) for the District of Columbia. Report at 37. Those violations are listed in the Appendix to this order.

the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01.

Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated June 7, 2002, the OCF requested the respondent's appearance at a scheduled hearing on June 14, 2002. The purpose of the hearing was for the respondent to show cause why he should not be found in violation of the Standards of Conduct, as alleged in the OIG Report.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of the DPM and 27 DCMR as a result of his involvement in a Sole Source procurement he allegedly processed on behalf of MWCBC. Consequently, OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of her responsibilities as a government employee. The OIG relies exclusively upon its Report, which is incorporated herein in its entirety.

On June 14, 2002 the respondent appeared pro se before the OCF at a scheduled hearing, conducted by William O. SanFord, Esq., Senior Staff Attorney. Wesley Williams, Investigator, was also present.

Synopsis of Proceedings

The respondent is a Support Services Officer with the Executive Office of the Mayor (EOM). He has been employed in that position for approximately 15 years. He stated that his duties include procurement of goods and services, providing travel, transportation, and telecommunication and human resource services for the EOM.

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

The respondent testified that he is familiar with the Standards of Conduct as cited in the DPM. The respondent further testified that he had read and understood the allegations against him in the Report. The respondent was informed that the Inspector General has alleged that he engaged in improper procurement practices and that he used government resources for other than official business or government approved or sponsored activity in violation of 27 DCMR §§1700.2, 1702, and 1705 and DPM 1806.1, when he authorized a sole source procurement for items that were used by MWCBC, a private, non-profit corporation.

The respondent denied the allegations and testified that he did not have the authority to approve expenditures of government funds. He stated that he was merely a processing agent who prepared purchase orders at the request of the Operations Officer, Hyong Yi, who was his manager at the time (1999). According to the respondent, the authority to approve expenditures of funds came from the Operations Office, which was under Mr. Yi's authority. The respondent stated that his responsibility as Support Services Officer did not include assigning financial coding for purchases or the ability to authorize documents without prior funding as alleged in the Inspector General's Report.

The respondent conceded that the procurement regulations require that a request for a sole source procurement be accompanied by a Determination and Finding (hereinafter D&F). The respondent testified that he requested a D&F for the procurement from his superior, but the document was never received.

The respondent testified that he prepared the procurement pursuant to being informed by Mr. Yi that he would prepare the D&F. Respondent stated that despite the fact that he requested a D&F in accordance with the procurement regulations as justification for the procurement prior to award or purchase, none was provided by Mr. Yi in this case. Respondent testified that he processes approximately five (5) sole source procurements a year and he cannot recall ever processing sole source procurement without a D&F.

The respondent denied having any specific knowledge of the MWCBC project but stated that he believed 5 personal services contracts whose value are estimated at \$25,000 to \$26,000 each were issued for MWCBC employees during the period in question. The respondent generally denied engaging in any discussions regarding the MWCBC organization and emphatically stated that his role in the matter was limited to following instructions he received from his superiors. However, the respondent did indicate that he sensed that there was "a lot of pressure to move forward with the procurements in the Millennium office."

The respondent further stated that he had no reason to believe that anything being done on behalf of the MWCBC was illegal. The respondent stated that he prepared the documents pursuant to instructions from his superiors but he did not provide the essential

financial coding required. According to the respondent, the financial coding component of the procurement process was performed by the then Director of Operations, Mr. Yi.

At the conclusion of the hearing, the respondent stated that as a result of the uncomfortable position he believes he has been placed in, he has informed the Office of Contracts and Procurement (OCP) that he will no longer participate in the procurement of personal services contracts. He further stated that the OCP has assigned the personal services contract duties he previously performed to members of the OCP staff. According to Mr. SanFord, the respondent demonstrated a general disappointment in his superiors and clearly indicated that he believes “top management” had compromised him.

Findings of Fact

Having reviewed the allegations and the record herein, I find:

1. Respondent, Alfonza Fitzgerald, as Support Services Officer with the Executive Office of the Mayor (hereinafter EOM), is a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. Among other things, Respondent is responsible for processing prepared purchase orders at the request of the EOM Operations Officer.
3. In October 1999, Hyong Yi acted as the EOM Operations Officer.
4. MWCBC was incorporated in October 1999 under the auspices of Henry “Sandy” McCall, then Deputy Chief of Staff for External Affairs in the Office of the Mayor, as a private, non-profit corporation authorized to solicit donations for the 2000 millennium celebration in the District of Columbia. Report at 50-51.
5. From November 1999 through the middle of January 2000, MWCBC operated out of the EOM office located at 1 Judiciary Square, 441 4th Street, NW, Washington, D.C. Id.
6. Hyong Yi had fiscal oversight responsibility over MWCBC. Report at 65.
7. Respondent was instructed by Mr. Yi to prepare purchase orders on behalf of MWCBC.
8. Respondent processed D.C. government purchase orders for personal services contracts on behalf of MWCBC.
9. The responsibility for enforcing the provisions of the employee conduct rules against the respondent rests with the Mayor of the District of Columbia (hereinafter the

Mayor).

Conclusions of Law

1. Respondent is an employee of the District of Columbia government and is subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. From November 1999 through the middle of January 2000, MWCBC, notwithstanding that it was a private, non-profit corporation, operated out of 1 Judiciary Square as a District of Columbia government agency; and the respondent believed that MWCBC business was government business.
3. Respondent used District of Columbia government property, equipment and material to process government purchase orders on behalf of MWCBC, and, did violate the employee conduct regulations, notwithstanding respondent, in performing tasks to process MWCBC purchase orders executed same at the direction of his supervisor.

Recommendation

Because of the limited participation of the respondent in the conduct of MWCBC business on government time, I hereby recommend the Director to advise the Mayor to warn the respondent to refrain, in the future, from prohibitive conduct, and to mandate that the respondent, if he has not already done so, attend training sessions on the DPM Standards of Conduct.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

Because of the limited participation of the respondent in the conduct of MWCBC business on government time, I hereby advise the Mayor to warn the respondent to refrain, in the future, from prohibitive conduct, and to mandate that the respondent, if he has not already done so, attend training sessions on the DPM Standards of Conduct.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

Alfonza Fitzgerald
2390 Branleigh Park Court
Reston, VA 22091

Charles Maddox, Esq.
Inspector General
Office of the Inspector General
717 14th Street, NW, 5th Floor
Washington, D.C. 20005

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR §3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, NW, Washington, D.C., 20009.

Appendix

OIG has alleged that the respondent also violated the following regulations:

1700.2

In each instance where the sole source or emergency procurement procedures set forth in this chapter are used, the contracting officer shall do the following:

- (a) Prepare a written determination and findings (“D&F”) justifying the procurement which specifically demonstrates that procurement by competitive sealed bids or competitive sealed proposals is not required by the provisions of the Act or this title; and
- (b) Ensure that all of the steps required under this chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

1702.1

The contracting officer may award a contract by using the noncompetitive negotiation procedures set forth in § 1706 upon making a determination and findings that there is only one (1) available source for a supply, service, or construction.

1705

When a sole source procurement is proposed, the contracting officer shall prepare a written determination and findings (“D&F”) that sets forth the justification for the sole source procurement. If the procurement is in excess of twenty-five thousand dollars (\$25,000), the D&F shall be approved by the Director in accordance with § 1010.2(a) of chapter 10 of this title.

Each sole source D&F shall include the following:

- (a) Identification of the agency and specific identification of the document as

- a sole source D&F;
- (b) The nature or description of the proposed procurement;
- (c) A description of the requirement, including the estimated value or cost;
- (d) A specific citation to the applicable provisions of § 305(a) of the Act and this chapter that provide legal authority for the sole source procurement;
- (e) An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement.
- (f) An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;
- (g) A determination that the anticipated costs to the District will be fair and reasonable;
- (h) A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the contracting officer or which expressed, in writing, an interest in the procurement, and
- (i) Any other pertinent facts or reasons supporting the use of a sole source procurement.

As stated in note (1) herein, OIG has referred this matter to the CPO.